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8 CURTIS TURNER,  
9 Plaintiff,

10 v.  
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12 CONTRA COSTA COUNTY  
13 SUPREME COURT, et al.,  
14 Defendants.  
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16 Case No. 22-cv-03397 BLF (PR)  
17

18 **ORDER OF DISMISSAL**

19 Plaintiff, who is currently confined at West County Detention Facility, filed the  
20 instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave  
21 to proceed *in forma pauperis* will be granted in a separate order.

22 **DISCUSSION**

23 **A. Standard of Review**

24 A federal court must conduct a preliminary screening in any case in which a  
25 prisoner seeks redress from a governmental entity or officer or employee of a  
26 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any  
27 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
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1 upon which relief may be granted or seek monetary relief from a defendant who is immune  
2 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally  
3 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff claims "court conspiracy," ineffective assistance of counsel, attorney  
10 malpractice, and several other allegations in connection with state criminal proceedings in  
11 Contra Costa County Superior Court. Dkt. No. 1 at 3. The attached papers indicate that  
12 the allegations are in connection with Case No. 02-334434-8, involving charges of  
13 indecent exposure, carrying a dirk or dagger, and probation violation. *Id.* at 8. Plaintiff  
14 claims that he was subjected to two evaluations which found him competent, but that a  
15 third evaluation, conducted by one of the same doctors, found him incompetent. *Id.* at 2-3.  
16 Plaintiff claims that false claims were made against him to "assassinate" his character. *Id.*  
17 at 3. Plaintiff claims that the court then ruled he was "incompetent" and "schedule[e]d  
18 him to "DSH... for... so called incompetent test result." *Id.* Plaintiff names as defendants  
19 his public defender, the district attorney, the trial judge, and "all [who] work for Contra  
20 Costa Co. Supreme Court [and] P.D. Office." *Id.* at 2. He seeks a settlement and award in  
21 his favor. *Id.*

22 Plaintiff appears to be challenging the finding that he was incompetent to stand trial  
23 under California Penal Code § 1370. This is bolstered by the fact that he includes a claim  
24 for compassionate release under Penal Code § 1370.015, which specifically states that such  
25 relief may be available to those who have been committed because they were found  
26 incompetent to stand trial. Furthermore, the Court has conducted a search of Plaintiff's  
27 criminal case (No. 02003344348) on the Contra Costa County Superior Court's online

1 database.<sup>1</sup> <sup>2</sup> The docket for this case indicates that a “DSH Commitment” document was  
2 filed on March 3, 2022; Plaintiff signed the instant complaint four days later, on March 7,  
3 2022. Dkt. No. 1 at 3. The docket also indicates that a “Mental Health Diversion  
4 Petition”<sup>3</sup> was recently filed on November 7, 2022. *See infra* at fn. 1. Furthermore,  
5 several matters have been scheduled, including a “Felony Readiness Conference”<sup>4</sup>  
6 (11/10/2022), a “Preliminary Hearing” (11/15/2022), and a “Doctors Report Hearing”  
7 (12/7/2022). *Id.* Accordingly, it appears that state proceedings have been ongoing or are  
8 recommencing.

9 As an initial matter, Plaintiff’s claims for damages against the trial judge, the  
10 district attorney, and public defender are barred or fail to state a cognizable claim. A state  
11 judge is absolutely immune from civil liability for damages for acts performed in his  
12 judicial capacity. *See Pierson v. Ray*, 386 U.S. 547, 553-55 (1967) (applying judicial  
13 immunity to actions under 42 U.S.C. § 1983). Judicial immunity is an immunity from suit  
14 for damages, not just from an ultimate assessment of damages. *See Mitchell v. Forsyth*,  
15 472 U.S. 511, 526 (1985). Finding Plaintiff was incompetent to stand trial was certainly  
16 an act performed in his judicial capacity. Likewise, Plaintiff’s damage claim against the  
17 prosecuting attorney is also barred. A state prosecuting attorney enjoys absolute immunity  
18 from liability under 42 U.S.C. § 1983 for his conduct in “pursuing a criminal prosecution”  
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20 <sup>1</sup> <https://odyportal.cc-courts.org/Portal/Home/Dashboard/29>

21 <sup>2</sup> A district court “may take notice of proceedings in other courts, both within and without  
22 the federal judicial system, if those proceedings have a direct relation to matters at issue.”  
23 *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (internal quotation marks and  
citations omitted) (granting request to take judicial notice in § 1983 action of five prior  
cases in which plaintiff was pro se litigant, to counter her argument that she deserved  
special treatment because of her pro se status).

25 <sup>3</sup> Pursuant to Cal. Pen. Code § 1001.36, a defendant with a mental disorder who has been  
accused of committing specific crimes may qualify to receive treatment rather than go to  
jail or prison.

27 <sup>4</sup> *See* California Rules of Court 4.112. Readiness conference (court may hold a readiness  
conference in felony cases within 1 to 14 days before the date set for trial).

1 insofar as he acts within his role as an “advocate for the State” and his actions are  
2 “intimately associated with the judicial phase of the criminal process.” *Imbler v.*  
3 *Pachtman*, 424 U.S. 409, 430-31 (1976). (1976). Lastly, Plaintiff cannot state a claim  
4 against his public defender because a public defender does not act under color of state law,  
5 an essential element of an action under 42 U.S.C. § 1983, when performing a lawyer’s  
6 traditional functions, such as entering pleas, making motions, objecting at trial, cross-  
7 examining witnesses, and making closing arguments. *Polk County v. Dodson*, 454 U.S.  
8 312, 318-19 (1981); *accord Vermont v. Brillon*, 556 U.S. 81, 93 (2009). Accordingly, the  
9 claims against these defendants must be dismissed.

10 With respect to any remaining claims, in order to recover damages for an allegedly  
11 unconstitutional conviction or imprisonment, or for other harm caused by actions whose  
12 unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff  
13 must prove that the conviction or sentence has been reversed on direct appeal, expunged  
14 by executive order, declared invalid by a state tribunal authorized to make such  
15 determination, or called into question by a federal court’s issuance of a writ of habeas  
16 corpus. *Heck*, 512 U.S. at 486-487. A claim for damages bearing that relationship to a  
17 conviction or sentence that has not been so invalidated is not cognizable under § 1983. *Id.*  
18 at 487. When a state prisoner seeks damages in a § 1983 suit, the district court must  
19 therefore consider whether a judgment in favor of the plaintiff would necessarily imply the  
20 invalidity of his conviction or sentence; if it would, the complaint must be dismissed  
21 unless the plaintiff can demonstrate that the conviction or sentence has already been  
22 invalidated. *Id.* *Heck* applies to detainees under an involuntary civil commitment scheme,  
23 such as California’s Sexually Violent Predator’s Act (“SVPA”) with access to habeas  
24 relief. *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1140 (9th Cir. 2005). Such a detainee’s  
25 claim for damages and/or declaratory relief must be dismissed without prejudice under the  
26 rationale of *Heck* if success on the claim would necessarily imply the invalidity of the  
27 detainee’s civil commitment. *See id.* at 1140-41, 1142.

1       Here, it appears that Plaintiff was found incompetent to stand trial. Therefore, his  
2 claim for damages must be dismissed without prejudice under the rationale of *Heck*  
3 because success on the claim would necessarily imply the invalidity of Plaintiff's civil  
4 commitment. *See Huftile*, 410 F.3d at 1140. Until and unless his civil commitment is  
5 invalidated, Plaintiff cannot bring a claim for damages under § 1983. Accordingly, this  
6 action must be dismissed as barred by *Heck*, 512 U.S. at 487.

7       **C. Guardian ad litem**

8       Federal Rule of Civil Procedure 17(c) provides in relevant part that:

9       A minor or an incompetent person who does not have a duly appointed  
10 representative may sue by a next friend or aby a guardian ad litem. The court  
11 must appoint a guardian ad litem – or issue another appropriate order – to  
12 protect a minor or incompetent person who is unrepresented in an action.

13       Fed. R. Civ. P. 17(c)(2). The purpose of Federal Rule of Civil Procedure 17(c) is to  
14 protect an incompetent person's interest in prosecuting or defending a lawsuit. *Davis v.*  
15 *Walker*, 745 F.3d 1303, 1310 (9th Cir. 2014) (citation omitted). When the court  
16 determines that a pro se litigant is incompetent, a guardian ad litem should be appointed  
17 under Rule 17(c), but the appointment is not mandatory. *Id.*

18       “[I]n the unusual case when it is clear that a potentially incompetent party has no  
19 interest that could be protected by appointing a guardian ad litem or issuing another  
20 appropriate order,” a district court may decline to assess the party's competence and  
21 decline to appoint a guardian ad litem. *Harris v. Mangum*, 863 F.3d 1133, 1039 (9th Cir.  
22 2017); *see, e.g., id.* at 1138-39 (district court did not abuse its discretion in declining to  
23 hold competency hearing where it was “beyond question” that prisoner-plaintiff had no  
24 viable claim against the defendants and there was no negative collateral consequence from  
25 having filed the present frivolous complaint because the prisoner-plaintiff already had  
26 three strikes under § 1915(g)). At this point, Plaintiff has no viable claim because of the  
27 *Heck* bar and there are no interests that could be protected by appointing a guardian ad

1 item at this juncture. Furthermore, Plaintiff may still return with a § 1983 claim if the  
2 underlying commitment, sentence, or conviction are reversed on direct appeal, expunged  
3 by executive order, declared invalid by a state tribunal authorized to make such  
4 determination, or called into question by a federal court's issuance of a writ of habeas  
5 corpus. *Heck*, 512 U.S. at 486-487. Accordingly, the Court declines to assess Plaintiff's  
6 competency and appoint a guardian ad litem at this time. *Harris*, 863 F.3d at 1039.

7  
8 **CONCLUSION**

9 For the foregoing reasons, the complaint is **DISMISSED** without prejudice as  
10 barred by *Heck*, 512 U.S. at 487.

11 **IT IS SO ORDERED.**

12 **Dated:** November 8, 2022



BETH LABSON FREEMAN  
United States District Judge

Northern District of California

25 Order of Dismissal  
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